

# EXHIBIT “I”

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TERESA MCCOY,

PLAINTIFF,

-against-

Case No.:  
21-CV-04907

THE TJX COMPANIES, INC.,

DEFENDANT.

-----X

DATE: March 1, 2022

TIME: 10:00 A.M

DEPOSITION of the Defendant, THE  
TJX COMPANIES, INC. By a Witness, JOE  
BAGLIVIO, taken by the Plaintiff, pursuant  
to the Federal Rules of Civil Procedure,  
held remotely via Zoom, before Evelyn  
Herrera, a Notary Public of the State of  
New York.

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A P P E A R A N C E S:

MICHAEL G. O'NEILL, ESQ.

Attorney for the Plaintiff  
217 Broadway  
New York, New York 10007

SIMMONS JANNACE DELUCA, LLP  
Attorneys for the Defendant  
43 Corporate Drive  
Hauppauge, New York 11788  
BY: MARY C. AZZARETTO, ESQ.

\* \* \*

1

2 F E D E R A L S T I P U L A T I O N S

3

4

5 IT IS HEREBY STIPULATED AND AGREED by and  
6 between the counsel for the respective  
7 parties herein that the sealing, filing and  
8 certification of the within deposition be  
9 waived; that the original of the deposition  
10 may be signed and sworn to by the witness  
11 before anyone authorized to administer an  
12 oath, with the same effect as if signed  
13 before a Judge of the Court; that an  
14 unsigned copy of the deposition may be used  
15 with the same force and effect as if signed  
16 by the witness, 30 days after service of  
17 the original & 1 copy of same upon counsel  
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that  
21 all objections except as to form, are  
22 reserved to the time of trial.

23

24 \* \* \* \*

25

1 [J. BAGLIVIO]

2 J O E B A G L I V I O , called as a  
3 witness, having been first duly sworn by a  
4 Notary Public of the State of New York,  
5 stated his address as 795 Columbus Avenue,  
6 New York, New York, was examined and  
7 testified as follows:

8 MS. AZZARETTO: Before we  
9 begin, I just want to reserve the  
10 witness' rights to make changes to  
11 the transcript, please.

12 MR. O'NEILL: Okay, of course.

13 EXAMINATION BY

14 MR. O'NEILL:

15 Q. The address that you gave, is  
16 that your home address?

17 A. Correct.

18 Q. You are employed by Home Goods?

19 A. Yes.

20 Q. The issue with that is that  
21 when this case goes to trial, if it does go  
22 to trial, and if you are not employed by  
23 Home Goods and I need you as a witness, I  
24 won't know how to reach you. So there is  
25 two ways. You can give your home address

1 [J. BAGLIVIO]

2 or if you don't want to do that, and I  
3 understand that -- in fact, I can take it  
4 off the record, if you would prefer. The  
5 other thing you can do is, you can appoint  
6 your lawyer's law firm as your agent to  
7 accept service of a subpoena even if you  
8 are no longer employed at Home Goods. It  
9 is up to you.

10 MS. AZZARETTO: We will accept  
11 service on his behalf in the event he  
12 is employed. In the event he is no  
13 longer employed, then we'll provide  
14 you with his last-known address.

15 MR. O'NEILL: Okay, I'll take  
16 that. Good enough.

17 Q. Mr. Baglivio, where are you  
18 right now, just the city and state?

19 A. New York, New York.

20 Q. You are outdoors?

21 A. Yes.

22 Q. The background noise may become  
23 an issue. I hope not.

24 A. I'll see what I can do, because  
25 I'm actually at my job, but my Wi-Fi went

1 [J. BAGLIVIO]

2 down, which is why I ended up stepping out.

3 Q. Let's just keep going. If  
4 there is an issue, then we'll deal with it.  
5 I don't think the deposition is going to  
6 take a long time, so we might as well just  
7 get through it.

8 What is your educational  
9 background?

10 A. High school, with a little bit  
11 of college, but I never graduated.

12 Q. What year did you graduate from  
13 high school?

14 A. '92.

15 Q. 1992?

16 A. Yes.

17 Q. What high school was that?

18 A. Edward R. Morrow.

19 Q. How long have you been employed  
20 by Home Goods?

21 A. Just short of six years now,  
22 give or take, about five years -- a little  
23 over five-and-a-half years.

24 Q. Before Home Goods, where were  
25 you employed?

1 [J. BAGLIVIO]

2 A. Toys "R" Us.

3 Q. For how long?

4 A. Seventeen years.

5 Q. What position did you have  
6 there?

7 A. Assistant manager.

8 Q. Were you in retail before Toys  
9 "R" Us?

10 A. Before Toys "R" Us, I was in  
11 GNC, which was also a retail store.

12 Q. Approximately how many years  
13 altogether do you have in retail?

14 A. 28-some-odd years, give or  
15 take.

16 Q. When you became employed by  
17 Home Goods, did you start as a manager or  
18 something else?

19 A. I started as a manager.

20 Q. In terms of store safety or  
21 customer safety, did you receive any  
22 training at Home Goods with respect to  
23 that?

24 A. Yes.

25 Q. What kind of training did you

1 [J. BAGLIVIO]

2 receive?

3 A. Safety standards, which is a  
4 list of policies and procedures that we do  
5 to maintain the safety of customers and  
6 associates.

7 Q. Does that deal with the  
8 displays?

9 A. It deals with merchandising,  
10 yes.

11 Q. Is that something that you keep  
12 in the store? Is that like a store manual?

13 A. It's accessible online.

14 Q. What does that manual cover,  
15 generally, in terms of merchandising?

16 A. Merchandise presentations, how  
17 to ensure the -- how it is supposed to  
18 look, how to merchandise aisles, shelves,  
19 platforms.

20 Q. That is from a safety  
21 perspective?

22 A. Yes. So safety perspective  
23 when we're talking about presentation, make  
24 sure the item is on a platform, make sure  
25 that items are not too heavy for the shelf

1 [J. BAGLIVIO]

2 to go on.

3 Q. Have you been at the Columbus  
4 Avenue store your whole time at Home Goods?

5 A. I just came back. I was out --  
6 I was transferred to the Brooklyn location.  
7 I just got back in September. I was at the  
8 Brooklyn location for approximately six  
9 months.

10 Q. The time frame that we're  
11 dealing with is July 28, 2019. So if I  
12 don't specify a different time frame,  
13 that's what I'm talking about. Did you do  
14 anything to prepare for today's deposition?

15 A. I did not.

16 Q. Have you ever been deposed  
17 before?

18 A. Not through Home Goods.

19 Q. At any time?

20 A. Yes.

21 Q. Was it in any connection with  
22 your other jobs or something personal?

23 A. My other jobs.

24 Q. Were you on duty on July 28,  
25 2019?

1 [J. BAGLIVIO]

2 A. Yes.

3 Q. What, generally, was your  
4 schedule at that time?

5 A. I honestly don't remember. I'm  
6 not sure if I was an opener or a closer.

7 Q. If you were an opener, what  
8 would your hours have been?

9 A. Probably 9 to 5. And if I was  
10 a closer, 1 to close.

11 Q. What time does the store close?

12 A. 9:00.

13 Q. Are there any type of  
14 surveillance video cameras at that  
15 location?

16 A. There is.

17 Q. Where are they located?

18 A. They're sporadically thrown  
19 throughout the sales floor.

20 Q. If you had a floor plan of the  
21 store, would you be able to identify the  
22 location of the video cameras?

23 A. No.

24 Q. You are familiar with an  
25 incident that involved my client, Teresa

1 [J. BAGLIVIO]

2 McCoy, on July 28, 2019?

3 A. Yes.

4 Q. What do you recall of that  
5 incident?

6 A. I recall that I was paged when  
7 somebody had got -- I believe somebody got  
8 hurt, something about stools to that effect  
9 and I took -- because I was the one that  
10 called it in to my risk management  
11 department.

12 Q. What did you do after you were  
13 paged?

14 A. I went over to speak with the  
15 customer. Found out what happened, took  
16 information down. And once I take the  
17 information down, I put that over to my  
18 risk management department.

19 Q. Where was the location of the  
20 incident?

21 A. I believe it was at Department  
22 33.

23 Q. What would that be?

24 A. That's on a sales floor, power  
25 aisle, close to the entrance door, I

1 [J. BAGLIVIO]

2 believe.

3 Q. I didn't catch the word before  
4 aisle?

5 A. On the sales floor.

6 MS. AZZARETTO: I think he said  
7 "power aisle."

8 A. Power aisle. I'm sorry. Yes,  
9 that is what we call the pathway that  
10 customers walk through the store.

11 Q. What is the word?

12 A. Power aisle.

13 Q. Oh, power aisle.

14 A. Yes.

15 Q. So I take it that is -- you  
16 said that is where most customers come in  
17 through the store?

18 A. Yes. It is like the main  
19 pathway before you break up into individual  
20 departments.

21 Q. So you are likely on that aisle  
22 -- every customer is likely to see what is  
23 on that aisle; is that fair to say?

24 A. Yes.

25 Q. I take it that is an important

1 [J. BAGLIVIO]

2 factor in terms of merchandising?

3 A. Yes, key area.

4 Q. When you arrived at the area of  
5 the incident, what did you see?

6 A. I don't remember at this point.

7 Q. Do you remember if my client  
8 was on the floor, sitting, standing or  
9 something else?

10 A. I honestly don't remember.

11 Q. Do you remember anything other  
12 than the fact that you were paged, as you  
13 described, and went to the area of the  
14 incident and called it into risk  
15 management?

16 A. I remember speaking with the  
17 customer, but that's as much as I can  
18 recall at the moment.

19 Q. Do you remember anything you  
20 said or anything she said?

21 A. I do not.

22 Q. Were there any other store  
23 employees in the area?

24 A. I do not recall. There was  
25 another -- there were other store

1 [J. BAGLIVIO]

2 employees, but I don't remember who they  
3 are. I don't even remember who paged me.

4 Q. Did you have a security guard  
5 in the store at that time?

6 A. I do not remember 100 percent.  
7 We usually have security in the building.  
8 I'm not sure if he was on break.

9 Q. Was security provided by Home  
10 Goods employees or did you contract with an  
11 agency?

12 A. We do both. So I don't recall  
13 which one was present at the time.

14 Q. After speaking to the customer,  
15 did you do anything, that you recall?

16 A. Simply inspected the area and  
17 then I got back to risk management to  
18 report the incident.

19 Q. When you inspected the area,  
20 what did you see?

21 A. I remember seeing the stools in  
22 question, but that's all I saw.

23 Q. What, if anything, did you do  
24 with respect to the stools in question?

25 A. Originally, it was pulled off

1 [J. BAGLIVIO]

2 the sales floor and, as I normally do,  
3 waiting for risk management to tell me  
4 whether or not they get put back on the  
5 floor.

6 Q. Where were the stools when you  
7 first took them off the floor?

8 A. They were on the platform.

9 Q. Were they stacked on top of  
10 each other or next to each other?

11 A. When I got there, they were  
12 separated, but they were off the shelf. It  
13 wasn't in their normal position.

14 Q. What would their normal  
15 position be?

16 A. With the legs being on the  
17 floor, all four legs being on the floor.  
18 If there were two stools on it, they would  
19 be next to each other or opposite each  
20 other.

21 Q. I take it you are saying they  
22 should not be stacked?

23 A. Correct.

24 Q. Do you know if they were  
25 stacked when the incident happened?

1 [J. BAGLIVIO]

2 A. I do not know.

3 Q. I'm going to show you what was  
4 marked at the plaintiff's deposition as  
5 Exhibit B. Are you able to see that  
6 picture?

7 A. Yes.

8 Q. What are we looking at here?

9 A. That is actually a display  
10 table with stools on top of the table.

11 Q. Is this the area where the  
12 incident occurred?

13 A. This is the 33 section, yes.  
14 It is a feature table.

15 Q. The stools are on their side.  
16 Is that the way they should be displayed?

17 A. If it is on the table, it can  
18 be on its side because it is not on the  
19 floor on a platform. Rather, this way,  
20 they can see the top of the stool as they  
21 walk in.

22 Q. I'm going to show you -- I  
23 haven't marked it, but this will be marked  
24 as Plaintiff's Exhibit 1 and I will send it  
25 out to you, Mary. Is this a picture that

1 [J. BAGLIVIO]

2 you took?

3 A. It may be.

4 Q. Do you recognize where this  
5 picture was taken?

6 A. This picture was taken -- this  
7 picture, apparently, was taken in my  
8 office.

9 Q. What will be marked as  
10 Plaintiff's Exhibit 2 was also in your  
11 office?

12 A. Correct.

13 Q. I'm going to show you what I  
14 will mark as Plaintiff's Exhibit 3. This  
15 is a document that is entitled TJX Accident  
16 Report. Do you recognize this document?

17 A. Yes.

18 Q. Is this something that you  
19 filled out?

20 A. No. This is -- when I call  
21 risk management, I speak the incident over  
22 the phone. So the risk management  
23 department will then fill in the details  
24 based on me verbally explaining what  
25 happened.

1 [J. BAGLIVIO]

2 Q. What is the procedure for  
3 calling in to risk management?

4 A. If anybody gets hurt or there  
5 is an incident in the store, it goes to  
6 risk management until we file the report.

7 Q. What I'm asking is, where is  
8 risk management? Is that an internal part  
9 of Home Goods or do you know if it is an  
10 outside company?

11 A. The risk management is part of  
12 Home Goods. It is generally -- it is  
13 connected to my home office, which is in  
14 Boston somewhere.

15 Q. Other than calling this in, do  
16 you have any follow-up work as a general  
17 course?

18 A. No, not unless risk management  
19 contacts us back asking for additional  
20 information.

21 Q. Do you know what risk  
22 management does after you call in an  
23 accident report?

24 A. I do not know the entire  
25 process.

1 [J. BAGLIVIO]

2 Q. I want to show you what will be  
3 marked as Plaintiff's Exhibit 4. This was  
4 provided to me by Home Goods and I believe  
5 it is a map of the store. Is that what  
6 this is?

7 A. Yes, that is a floor plan.

8 Q. Where would the entrance to the  
9 store be?

10 A. Okay, we're two levels and this  
11 is a combination of both.

12 Q. Do you come in on the top level  
13 or does it go to the basement?

14 A. Yes, we come in on the top  
15 level. So Department 33 is actually at the  
16 door at the time. So I'm trying -- I'm  
17 sorry, I am pinching my phone trying to  
18 open it up as you are moving it.

19 Q. I'm trying to make it larger.  
20 If you want me to move it up or down or  
21 right or left or make it larger, just let  
22 me know.

23 A. Okay. So move up a little bit.  
24 I'm sorry, my mistake. Move it down. So  
25 right there, those two arrows will be the

1 [J. BAGLIVIO]

2 entrance and exit door, the two arrows from  
3 the outside. So the right-hand side is the  
4 entrance door. So the second arrow as you  
5 go straight that is pointing up, give or  
6 take, is about the location of that  
7 particular table where 33 is. So 33 will  
8 be that whole section on the left where the  
9 two cubes are and the wall.

10 Q. So the area where the doors are  
11 is the box that has the label "vestibule"?

12 A. Correct.

13 Q. And there are red lines that  
14 are, I guess, mark-out a section. Are  
15 those physical barriers or are those just  
16 for purposes of merchandising?

17 A. That's just for merchandising  
18 purposes. So in between the two red lines  
19 that are going up the whole strip is  
20 theoretically called our power aisle.

21 Q. Which side of the power aisle  
22 was the display in question with the  
23 stools, right or left?

24 A. Technically, it would be on the  
25 left. It could possibly be that first box

1 [J. BAGLIVIO]

2 that says "large" and "medium," it could be  
3 that display table or it could be the table  
4 to the left.

5 Q. It looks like there is a yellow  
6 box there that says "home" or "garden" and  
7 "floral." Does that help you at all?

8 A. Kind of sort of temporarily  
9 because my store currently doesn't have  
10 that department. Because I am in the city,  
11 I don't carry that department anymore.

12 Q. Where are the check-out  
13 registers?

14 A. Would be towards the right.  
15 There is two sets. So the ones upstairs  
16 are towards the right, to the right of  
17 those two arrows that are going down.

18 Q. Okay.

19 A. So that would be four  
20 registers.

21 Q. So they're labeled 1, 2, 3, 4;  
22 is that correct?

23 A. Yes.

24 Q. How many registers do you  
25 typically have open during the middle of

1 [J. BAGLIVIO]

2 the day?

3 A. Middle of the day will probably  
4 be three to four.

5 Q. Do you use particular registers  
6 or is it random or depends on who is on the  
7 register or something else? In other  
8 words, how do you decide which registers to  
9 use?

10 A. Register 2 and register 3 and  
11 register 4 would be the high-traffic  
12 registers. And register 4 would be the  
13 last register to open.

14 Q. Do your store employees receive  
15 any training with respect to safety?

16 A. The same training that I myself  
17 go through.

18 Q. Are employees instructed if  
19 they see some type of display or anything  
20 that might pose a hazard, are they supposed  
21 to do anything?

22 A. They're supposed to address it  
23 immediately.

24 Q. How would they address it?

25 A. Whether it is fixing it or

1 [J. BAGLIVIO]

2 picking it off the floor, depending on what  
3 the situation is.

4 Q. Is there anybody in the store  
5 who has the primary responsibility for  
6 safety?

7 A. No.

8 Q. What about for maintenance?

9 A. There is a specific person for  
10 maintenance that will generally keep the  
11 store clean.

12 Q. Is that employee a porter or  
13 does he have a different title?

14 A. We call them maintenance  
15 associates employed by Home Goods.

16 Q. What does that person do during  
17 his shift?

18 A. During the shift, he generally  
19 sweeps, spot mops, you know, clean the rest  
20 rooms.

21 Q. Is that on both shifts that you  
22 have a maintenance person?

23 A. Maintenance person is generally  
24 a morning shift. Sometimes early afternoon  
25 shifts.

1 [J. BAGLIVIO]

2 Q. There is an overlap between the  
3 morning and afternoon shift; correct?

4 A. If there are two schedules,  
5 yes.

6 Q. I mean just in general, the  
7 morning shift ends at 5, the closing shift  
8 begins at 1?

9 A. Yes. So we would have  
10 mid-shifts and people that carry over.

11 Q. Do you have part-time or  
12 full-time employees or both?

13 A. We have both.

14 Q. Would you have any record of  
15 the employees that were in the store on  
16 July 28, 2019?

17 A. I do not know. Our files are  
18 purged after X amount of time. So I am not  
19 sure if we'll have access to that.

20 Q. Which files are you referring  
21 to?

22 A. Like schedules, old schedules.

23 Q. Do you keep any type of  
24 personnel file in your store?

25 A. Personnel file, yes, those we

1 [J. BAGLIVIO]

2 do.

3 Q. Do you retain those for, I  
4 would suspect, at least seven years;  
5 correct?

6 A. Yes.

7 Q. Is there anything else about  
8 the incident that you recall that I haven't  
9 asked you about?

10 A. No.

11 Q. Did you have any further  
12 conversations with my client, other than  
13 the one that you had at the time of the  
14 incident?

15 A. I did not.

16 Q. Have you seen her come back to  
17 the store since then?

18 A. I honestly would not know.

19 MR. O'NEILL: Okay,  
20 Mr. Baglivio, I don't have any  
21 further questions for you. I  
22 appreciate your time.

23 MS. AZZARETTO: Thank you.

24 (Whereupon, at 10:30 A.M., the  
25 Examination of this witness was

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2

concluded.)

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° ° ° °

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D E C L A R A T I O N

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10

I hereby certify that having been  
first duly sworn to testify to the truth, I  
gave the above testimony.

11

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17

I FURTHER CERTIFY that the foregoing  
transcript is a true and correct transcript  
of the testimony given by me at the time  
and place specified hereinbefore.

18

19

\_\_\_\_\_  
JOHN BAGLIVIO

20

21

22

23

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

24

25

\_\_\_\_\_  
NOTARY PUBLIC

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2

E X H I B I T S

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4

PLAINTIFF EXHIBITS (DEEMED MARKED)

5

6

EXHIBIT EXHIBIT

7

NUMBER DESCRIPTION

8

1 PHOTOGRAPH

9

2 PHOTOGRAPH

10

3 TJX ACCIDENT REPORT

11

4 MAP OF STORE

12

13

(Exhibits retained by Counsel.)

14

15

I N D E X

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EXAMINATION BY

PAGE

18

MR. O'NEILL

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INFORMATION AND/OR DOCUMENTS REQUESTED

21

INFORMATION AND/OR DOCUMENTS

PAGE

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(None)

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C E R T I F I C A T E

STATE OF NEW YORK            )  
  :  SS.:  
COUNTY OF DUTCHESS        )

I, EVELYN HERRERA, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 7th day of March 2022.

  
\_\_\_\_\_  
EVELYN HERRERA

<p><b>A</b></p> <p>able 10:21 16:5  accept 5:7,10  access 24:19  accessible 8:13  accident 17:15 18:23 27:10  action 28:16  additional 18:19  address 4:5,15,16,25 5:14 22:22,24  administer 3:11  afternoon 23:24 24:3  agency 14:11  agent 5:6  <b>AGREED</b> 3:5,20  aisle 11:25 12:4,7,8,12,13 12:21,23 20:20,21  aisles 8:18  altogether 7:13  amount 24:18  <b>AND/OR</b> 27:20,21  anybody 18:4 23:4  anymore 21:11  apparently 17:7  appoint 5:5  appreciate 25:22  approximately 7:12 9:8  area 13:3,4,13,23 14:16 14:19 16:11 20:10  arrived 13:4  arrow 20:4  arrows 19:25 20:2 21:17  asked 25:9  asking 18:7,19  Assistant 7:7  associates 8:6 23:15  Attorney 2:4  Attorneys 2:7  authorized 3:11  Avenue 4:5 9:4  <b>AZZARETTO</b> 2:9 4:8 5:10 12:6 25:23  <b>A.M</b> 1:12 25:24</p> <p><b>B</b></p>	<p>B 4:2 16:5 27:2  back 9:5,7 14:17 15:4 18:19 25:16  background 5:22 6:9  Baglivio 1:17 4:1 5:1,17 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1,20 26:18  barriers 20:15  based 17:24  basement 19:13  begins 24:8  behalf 5:11  believe 11:7,21 12:2 19:4  bit 6:10 19:23  blood 28:16  Boston 18:14  box 20:11,25 21:6  break 12:19 14:8  Broadway 2:4  Brooklyn 9:6,8  building 14:7</p> <p><b>C</b></p> <p>C 2:2,9 26:6 28:2,2  call 12:9 17:20 18:22 23:14  called 4:2 11:10 13:14 20:20  calling 18:3,15  cameras 10:14,22  carry 21:11 24:10  case 1:6 4:21  catch 12:3  certification 3:8  certify 26:8,12 28:9,14  changes 4:10  check-out 21:12  city 5:18 21:10  Civil 1:18  clean 23:11,19  client 10:25 13:7 25:12  close 10:10,11 11:25  closer 10:6,10</p>	<p>closing 24:7  college 6:11  Columbus 4:5 9:3  combination 19:11  come 12:16 19:12,14 25:16  <b>COMPANIES</b> 1:8,16  company 18:10  concluded 26:2  connected 18:13  connection 9:21  contacts 18:19  contract 14:10  conversations 25:12  copy 3:14,17  Corporate 2:8  correct 4:17 15:23 17:12 20:12 21:22 24:3 25:5 26:13  counsel 3:6,17 27:13  <b>COUNTY</b> 28:5  course 4:12 18:17  Court 1:2 3:13  cover 8:14  cubes 20:9  currently 21:9  customer 7:21 11:15 12:22 13:17 14:14  customers 8:5 12:10,16</p> <p><b>D</b></p> <p>D 3:2 26:6 27:15  <b>DATE</b> 1:11  day 22:2,3 26:21 28:20  days 3:16  deal 6:4 8:7  dealing 9:11  deals 8:9  decide 22:8  <b>DEEMED</b> 27:4  Defendant 1:9,15 2:7  <b>DELUCA</b> 2:7  department 11:11,18,21 17:23 19:15 21:10,11  departments 12:20  depending 23:2</p>	<p>depends 22:6  deposed 9:16  deposition 1:15 3:8,9,14 6:5 9:14 16:4  described 13:13  <b>DESCRIPTION</b> 27:7  details 17:23  different 9:12 23:13  display 16:9 20:22 21:3 22:19  displayed 16:16  displays 8:8  <b>DISTRICT</b> 1:2,2  document 17:15,16  <b>DOCUMENTS</b> 27:20,21  door 11:25 19:16 20:2,4  doors 20:10  Drive 2:8  duly 4:3 26:9 28:11  <b>DUTCHESS</b> 28:5  duty 9:24</p> <p><b>E</b></p> <p>E 2:2,2 3:2,2 4:2 26:6 27:2,15 28:2,2  early 23:24  educational 6:8  Edward 6:18  effect 3:12,15 11:8  employed 4:18,22 5:8,12 5:13 6:19,25 7:16 23:15  employee 23:12  employees 13:23 14:2,10 22:14,18 24:12,15  ended 6:2  ends 24:7  ensure 8:17  entire 18:24  entitled 17:15  entrance 11:25 19:8 20:2 20:4  <b>ESQ</b> 2:3,9  Evelyn 1:19 28:7,23  event 5:11,12  examination 4:13 25:25 27:17 28:10,12</p>
--	--	---	--

<p><b>examined</b> 4:6</p> <p><b>Exhibit</b> 16:5,24 17:10,14 19:3 27:6,6</p> <p><b>Exhibits</b> 27:4,13</p> <p><b>exit</b> 20:2</p> <p><b>explaining</b> 17:24</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>F</b> 3:2 28:2</p> <p><b>fact</b> 5:3 13:12</p> <p><b>factor</b> 13:2</p> <p><b>fair</b> 12:23</p> <p><b>familiar</b> 10:24</p> <p><b>feature</b> 16:14</p> <p><b>Federal</b> 1:18</p> <p><b>file</b> 18:6 24:24,25</p> <p><b>files</b> 24:17,20</p> <p><b>filing</b> 3:7</p> <p><b>fill</b> 17:23</p> <p><b>filled</b> 17:19</p> <p><b>firm</b> 5:6</p> <p><b>first</b> 4:3 15:7 20:25 26:9</p> <p><b>five</b> 6:22</p> <p><b>five-and-a-half</b> 6:23</p> <p><b>fixing</b> 22:25</p> <p><b>floor</b> 10:19,20 11:24 12:5 13:8 15:2,5,7,17,17 16:19 19:7 23:2</p> <p><b>floral</b> 21:7</p> <p><b>follows</b> 4:7</p> <p><b>follow-up</b> 18:16</p> <p><b>force</b> 3:15</p> <p><b>foregoing</b> 26:12</p> <p><b>form</b> 3:21</p> <p><b>forth</b> 28:11</p> <p><b>Found</b> 11:15</p> <p><b>four</b> 15:17 21:19 22:4</p> <p><b>frame</b> 9:10,12</p> <p><b>full-time</b> 24:12</p> <p><b>further</b> 3:20 25:11,21 26:12 28:14</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>G</b> 2:3 4:2</p> <p><b>garden</b> 21:6</p> <p><b>general</b> 18:16 24:6</p>	<p><b>generally</b> 8:15 10:3 18:12 23:10,18,23</p> <p><b>give</b> 4:25 6:22 7:14 20:5</p> <p><b>given</b> 26:14 28:13</p> <p><b>GNC</b> 7:11</p> <p><b>go</b> 4:21 9:2 19:13 20:5 22:17</p> <p><b>goes</b> 4:21 18:5</p> <p><b>going</b> 6:3,5 16:3,22 17:13 20:19 21:17</p> <p><b>Good</b> 5:16</p> <p><b>Goods</b> 4:18,23 5:8 6:20 6:24 7:17,22 9:4,18 14:10 18:9,12 19:4 23:15</p> <p><b>graduate</b> 6:12</p> <p><b>graduated</b> 6:11</p> <p><b>guard</b> 14:4</p> <p><b>guess</b> 20:14</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>H</b> 27:2</p> <p><b>hand</b> 28:20</p> <p><b>happened</b> 11:15 15:25 17:25</p> <p><b>Hauppauge</b> 2:8</p> <p><b>hazard</b> 22:20</p> <p><b>heavy</b> 8:25</p> <p><b>held</b> 1:19</p> <p><b>help</b> 21:7</p> <p><b>hereinbefore</b> 26:15 28:11</p> <p><b>hereunto</b> 28:19</p> <p><b>Herrera</b> 1:20 28:7,23</p> <p><b>high</b> 6:10,13,17</p> <p><b>high-traffic</b> 22:11</p> <p><b>home</b> 4:16,18,23,25 5:8 6:20,24 7:17,22 9:4,18 14:9 18:9,12,13 19:4 21:6 23:15</p> <p><b>honestly</b> 10:5 13:10 25:18</p> <p><b>hope</b> 5:23</p> <p><b>hours</b> 10:8</p> <p><b>hurt</b> 11:8 18:4</p>	<hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>identify</b> 10:21</p> <p><b>immediately</b> 22:23</p> <p><b>important</b> 12:25</p> <p><b>incident</b> 10:25 11:5,20 13:5,14 14:18 15:25 16:12 17:21 18:5 25:8 25:14</p> <p><b>individual</b> 12:19</p> <p><b>information</b> 11:16,17 18:20 27:20,21</p> <p><b>inspected</b> 14:16,19</p> <p><b>instructed</b> 22:18</p> <p><b>interested</b> 28:17</p> <p><b>internal</b> 18:8</p> <p><b>involved</b> 10:25</p> <p><b>issue</b> 4:20 5:23 6:4</p> <p><b>item</b> 8:24</p> <p><b>items</b> 8:25</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>J</b> 4:1,2 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1</p> <p><b>JANNACE</b> 2:7</p> <p><b>job</b> 5:25</p> <p><b>jobs</b> 9:22,23</p> <p><b>JOE</b> 1:16</p> <p><b>JOHN</b> 26:18</p> <p><b>Judge</b> 3:13</p> <p><b>July</b> 9:11,24 11:2 24:16</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>keep</b> 6:3 8:11 23:10 24:23</p> <p><b>key</b> 13:3</p> <p><b>kind</b> 7:25 21:8</p> <p><b>know</b> 4:24 15:24 16:2 18:9,21,24 19:22 23:19 24:17 25:18</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>L</b> 3:2,2 4:2 26:6</p> <p><b>label</b> 20:11</p>	<p><b>labeled</b> 21:21</p> <p><b>large</b> 21:2</p> <p><b>larger</b> 19:19,21</p> <p><b>last-known</b> 5:14</p> <p><b>law</b> 5:6</p> <p><b>lawyer's</b> 5:6</p> <p><b>left</b> 19:21 20:8,23,25 21:4</p> <p><b>LEGAL</b> 1:24</p> <p><b>legs</b> 15:16,17</p> <p><b>Let's</b> 6:3</p> <p><b>level</b> 19:12,15</p> <p><b>levels</b> 19:10</p> <p><b>lines</b> 20:13,18</p> <p><b>list</b> 8:4</p> <p><b>little</b> 6:10,22 19:23</p> <p><b>LLP</b> 2:7</p> <p><b>located</b> 10:17</p> <p><b>location</b> 9:6,8 10:15,22 11:19 20:6</p> <p><b>long</b> 6:6,19 7:3</p> <p><b>longer</b> 5:8,13</p> <p><b>look</b> 8:18</p> <p><b>looking</b> 16:8</p> <p><b>looks</b> 21:5</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>MAGNA</b> 1:24</p> <p><b>main</b> 12:18</p> <p><b>maintain</b> 8:5</p> <p><b>maintenance</b> 23:8,10,14 23:22,23</p> <p><b>management</b> 11:10,18 13:15 14:17 15:3 17:21 17:22 18:3,6,8,11,18,22</p> <p><b>manager</b> 7:7,17,19</p> <p><b>manual</b> 8:12,14</p> <p><b>map</b> 19:5 27:11</p> <p><b>March</b> 1:11 28:20</p> <p><b>mark</b> 17:14</p> <p><b>marked</b> 16:4,23,23 17:9 19:3 27:4</p> <p><b>mark-out</b> 20:14</p> <p><b>marriage</b> 28:16</p> <p><b>Mary</b> 2:9 16:25</p> <p><b>matter</b> 28:18</p>
--	--	---	--

<p><b>McCoy</b> 1:3 11:2  <b>mean</b> 24:6  <b>medium</b> 21:2  <b>merchandise</b> 8:16,18  <b>merchandising</b> 8:9,15  13:2 20:16,17  <b>MICHAEL</b> 2:3  <b>middle</b> 21:25 22:3  <b>mid-shifts</b> 24:10  <b>mistake</b> 19:24  <b>moment</b> 13:18  <b>months</b> 9:9  <b>mops</b> 23:19  <b>morning</b> 23:24 24:3,7  <b>Morrow</b> 6:18  <b>move</b> 19:20,23,24  <b>moving</b> 19:18</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N</b> 2:2 3:2 26:6 27:15  <b>need</b> 4:23  <b>never</b> 6:11  <b>New</b> 1:2,21 2:5,5,8 4:4,6  4:6 5:19,19 28:4,8  <b>noise</b> 5:22  <b>normal</b> 15:13,14  <b>normally</b> 15:2  <b>Notary</b> 1:20 4:4 26:24  28:7  <b>NUMBER</b> 27:7</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>O</b> 3:2 4:2,2 26:6  <b>oath</b> 3:12  <b>objections</b> 3:21  <b>occurred</b> 16:12  <b>office</b> 17:8,11 18:13  <b>Oh</b> 12:13  <b>Okay</b> 4:12 5:15 19:10,23  21:18 25:19  <b>old</b> 24:22  <b>once</b> 11:16  <b>ones</b> 21:15  <b>online</b> 8:13  <b>open</b> 19:18 21:25 22:13  <b>opener</b> 10:6,7</p>	<p><b>opposite</b> 15:19  <b>original</b> 3:9,17  <b>Originally</b> 14:25  <b>outcome</b> 28:17  <b>outdoors</b> 5:20  <b>outside</b> 18:10 20:3  <b>overlap</b> 24:2  <b>O'NEILL</b> 2:3 4:12,14  5:15 25:19 27:18</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>P</b> 2:2,2 3:2  <b>PAGE</b> 27:17,21  <b>paged</b> 11:6,13 13:12 14:3  <b>part</b> 18:8,11  <b>particular</b> 20:7 22:5  <b>parties</b> 3:7 28:15  <b>part-time</b> 24:11  <b>pathway</b> 12:9,19  <b>people</b> 24:10  <b>percent</b> 14:6  <b>person</b> 23:9,16,22,23  <b>personal</b> 9:22  <b>personnel</b> 24:24,25  <b>perspective</b> 8:21,22  <b>phone</b> 17:22 19:17  <b>PHOTOGRAPH</b> 27:8,9  <b>physical</b> 20:15  <b>picking</b> 23:2  <b>picture</b> 16:6,25 17:5,6,7  <b>pinching</b> 19:17  <b>place</b> 26:15  <b>Plaintiff</b> 1:4,17 2:4 27:4  <b>plaintiff's</b> 16:4,24 17:10  17:14 19:3  <b>plan</b> 10:20 19:7  <b>platform</b> 8:24 15:8 16:19  <b>platforms</b> 8:19  <b>please</b> 4:11  <b>point</b> 13:6  <b>pointing</b> 20:5  <b>policies</b> 8:4  <b>porter</b> 23:12  <b>pose</b> 22:20  <b>position</b> 7:5 15:13,15  <b>possibly</b> 20:25</p>	<p><b>power</b> 11:24 12:7,8,12  12:13 20:20,21  <b>prefer</b> 5:4  <b>prepare</b> 9:14  <b>present</b> 14:13  <b>presentation</b> 8:23  <b>presentations</b> 8:16  <b>primary</b> 23:5  <b>probably</b> 10:9 22:3  <b>procedure</b> 1:18 18:2  <b>procedures</b> 8:4  <b>process</b> 18:25  <b>provide</b> 5:13  <b>provided</b> 14:9 19:4  <b>Public</b> 1:20 4:4 26:24  28:7  <b>pulled</b> 14:25  <b>purged</b> 24:18  <b>purposes</b> 20:16,18  <b>pursuant</b> 1:17  <b>put</b> 11:17 15:4</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b> 14:22,24 20:22  <b>questions</b> 25:21</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>R</b> 2:2 3:2 6:18 7:2,9,10  26:6 28:2  <b>random</b> 22:6  <b>reach</b> 4:24  <b>recall</b> 11:4,6 13:18,24  14:12,15 25:8  <b>receive</b> 7:21 8:2 22:14  <b>recognize</b> 17:4,16  <b>record</b> 5:4 24:14 28:12  <b>red</b> 20:13,18  <b>referring</b> 24:20  <b>register</b> 22:7,10,10,11,12  22:13  <b>registers</b> 21:13,20,24  22:5,8,12  <b>related</b> 28:15  <b>remember</b> 10:5 13:6,7  13:10,11,16,19 14:2,3,6  14:21</p>	<p><b>remotely</b> 1:19  <b>report</b> 14:18 17:16 18:6  18:23 27:10  <b>REQUESTED</b> 27:20  <b>reserve</b> 4:9  <b>reserved</b> 3:22  <b>respect</b> 7:22 14:24 22:15  <b>respective</b> 3:6  <b>responsibility</b> 23:5  <b>rest</b> 23:19  <b>retail</b> 7:8,11,13  <b>retain</b> 25:3  <b>retained</b> 27:13  <b>right</b> 5:18 19:21,25 20:23  21:14,16,16  <b>rights</b> 4:10  <b>right-hand</b> 20:3  <b>risk</b> 11:10,18 13:14  14:17 15:3 17:21,22  18:3,6,8,11,18,21  <b>rooms</b> 23:20  <b>Rules</b> 1:18</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>S</b> 2:2 3:2,2 27:2  <b>safety</b> 7:20,21 8:3,5,20  8:22 22:15 23:6  <b>sales</b> 10:19 11:24 12:5  15:2  <b>saw</b> 14:22  <b>saying</b> 15:21  <b>says</b> 21:2,6  <b>schedule</b> 10:4  <b>schedules</b> 24:4,22,22  <b>school</b> 6:10,13,17  <b>sealing</b> 3:7  <b>second</b> 20:4  <b>section</b> 16:13 20:8,14  <b>security</b> 14:4,7,9  <b>see</b> 5:24 12:22 13:5 14:20  16:5,20 22:19  <b>seeing</b> 14:21  <b>seen</b> 25:16  <b>send</b> 16:24  <b>separated</b> 15:12  <b>September</b> 9:7</p>
---	---	--	--

<b>service</b> 3:16 5:7,11 <b>SERVICES</b> 1:24 <b>set</b> 28:11,20 <b>sets</b> 21:15 <b>seven</b> 25:4 <b>Seventeen</b> 7:4 <b>shelf</b> 8:25 15:12 <b>shelves</b> 8:18 <b>shift</b> 23:17,18,24 24:3,7,7 <b>shifts</b> 23:21,25 <b>short</b> 6:21 <b>show</b> 16:3,22 17:13 19:2 <b>side</b> 16:15,18 20:3,21 <b>signed</b> 3:10,12,15 <b>SIMMONS</b> 2:7 <b>Simply</b> 14:16 <b>sitting</b> 13:8 <b>situation</b> 23:3 <b>six</b> 6:21 9:8 <b>somebody</b> 11:7,7 <b>sorry</b> 12:8 19:17,24 <b>sort</b> 21:8 <b>SOUTHERN</b> 1:2 <b>speak</b> 11:14 17:21 <b>speaking</b> 13:16 14:14 <b>specific</b> 23:9 <b>specified</b> 26:15 <b>specify</b> 9:12 <b>sporadically</b> 10:18 <b>spot</b> 23:19 <b>SS</b> 28:4 <b>stacked</b> 15:9,22,25 <b>standards</b> 8:3 <b>standing</b> 13:8 <b>start</b> 7:17 <b>started</b> 7:19 <b>state</b> 1:20 4:4 5:18 28:4,8 <b>stated</b> 4:5 <b>STATES</b> 1:2 <b>stepping</b> 6:2 <b>STIPULATED</b> 3:5,20 <b>stool</b> 16:20 <b>stools</b> 11:8 14:21,24 15:6 15:18 16:10,15 20:23 <b>store</b> 7:11,20 8:12,12 9:4 10:11,21 12:10,17	13:22,25 14:5 18:5 19:5 19:9 21:9 22:14 23:4,11 24:15,24 25:17 27:11 <b>straight</b> 20:5 <b>strip</b> 20:19 <b>subpoena</b> 5:7 <b>Subscribed</b> 26:20 <b>supposed</b> 8:17 22:20,22 <b>sure</b> 8:24,24 10:6 14:8 24:19 <b>surveillance</b> 10:14 <b>suspect</b> 25:4 <b>sweeps</b> 23:19 <b>sworn</b> 3:10 4:3 26:9,20 28:11	<b>today's</b> 9:14 <b>top</b> 15:9 16:10,20 19:12 19:14 <b>Toys</b> 7:2,8,10 <b>training</b> 7:22,25 22:15 22:16 <b>transcript</b> 4:11 26:13,13 <b>transferred</b> 9:6 <b>trial</b> 3:22 4:21,22 <b>true</b> 26:13 28:12 <b>truth</b> 26:9 <b>trying</b> 19:16,17,19 <b>two</b> 4:25 15:18 19:10,25 20:2,9,18 21:15,17 24:4 <b>type</b> 10:13 22:19 24:23 <b>typically</b> 21:25	4:3,10,23 25:25 28:10 28:13,19 <b>Wi-Fi</b> 5:25 <b>word</b> 12:3,11 <b>words</b> 22:8 <b>work</b> 18:16 <b>www.MagnaLS.com</b> 1:25
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<b>T</b>			
<hr/>			
<b>T</b> 3:2,2 26:6 27:2 28:2,2 <b>table</b> 16:10,10,14,17 20:7 21:3,3 <b>take</b> 5:3,15 6:6,22 7:15 11:16 12:15,25 15:21 20:6 <b>taken</b> 1:17 17:5,6,7 <b>talking</b> 8:23 9:13 <b>Technically</b> 20:24 <b>tell</b> 15:3 <b>temporarily</b> 21:8 <b>Teresa</b> 1:3 10:25 <b>terms</b> 7:20 8:15 13:2 <b>testified</b> 4:7 <b>testify</b> 26:9 <b>testimony</b> 26:10,14 28:13 <b>Thank</b> 25:23 <b>theoretically</b> 20:20 <b>thing</b> 5:5 <b>think</b> 6:5 12:6 <b>three</b> 22:4 <b>thrown</b> 10:18 <b>time</b> 1:12 3:22 6:6 9:4,10 9:12,19 10:4,11 14:5,13 19:16 24:18 25:13,22 26:14 <b>title</b> 23:13 <b>TJX</b> 1:8,16 17:15 27:10			
<hr/>			
<b>U</b>			
<hr/>			
<b>U</b> 3:2 <b>understand</b> 5:3 <b>UNITED</b> 1:2 <b>unsigned</b> 3:14 <b>upstairs</b> 21:15 <b>use</b> 22:5,9 <b>usually</b> 14:7			
<hr/>			
<b>V</b>			
<hr/>			
<b>V</b> 4:2 <b>verbally</b> 17:24 <b>vestibule</b> 20:11 <b>video</b> 10:14,22			
<hr/>			
<b>W</b>			
<hr/>			
<b>waiting</b> 15:3 <b>waived</b> 3:9 <b>walk</b> 12:10 16:21 <b>wall</b> 20:9 <b>want</b> 4:9 5:2 19:2,20 <b>wasn't</b> 15:13 <b>way</b> 16:16,19 28:17 <b>ways</b> 4:25 <b>went</b> 5:25 11:14 13:13 <b>we'll</b> 5:13 6:4 24:19 <b>we're</b> 8:23 9:10 19:10 <b>WHEREOF</b> 28:19 <b>witness</b> 1:16 3:10,16,18			
<hr/>			
4:3,10,23 25:25 28:10 28:13,19 <b>Wi-Fi</b> 5:25 <b>word</b> 12:3,11 <b>words</b> 22:8 <b>work</b> 18:16 <b>www.MagnaLS.com</b> 1:25			
<hr/>			
<b>X</b>			
<hr/>			
<b>X</b> 1:3,9 24:18 27:2,15			
<hr/>			
<b>Y</b>			
<hr/>			
<b>year</b> 6:12 <b>years</b> 6:21,22,23 7:4,12 7:14 25:4 <b>yellow</b> 21:5 <b>York</b> 1:2,21 2:5,5,8 4:4,6 4:6 5:19,19 28:4,8			
<hr/>			
<b>Z</b>			
<hr/>			
<b>Zoom</b> 1:19			
<hr/>			
<b>1</b>			
<hr/>			
<b>1</b> 1:11 3:17 10:10 16:24 21:21 24:8 27:8 <b>10:00</b> 1:12 <b>10:30</b> 25:24 <b>100</b> 14:6 <b>10007</b> 2:5 <b>11788</b> 2:8 <b>1992</b> 6:15			
<hr/>			
<b>2</b>			
<hr/>			
<b>2</b> 17:10 21:21 22:10 27:9 <b>20</b> 26:21 <b>2019</b> 9:11,25 11:2 24:16 <b>2022</b> 1:11 28:20 <b>21-CV-04907</b> 1:6 <b>217</b> 2:4 <b>28</b> 9:11,24 11:2 24:16 <b>28-some-odd</b> 7:14			
<hr/>			
<b>3</b>			
<hr/>			
<b>3</b> 17:14 21:21 22:10 27:10 <b>30</b> 3:16			

33 11:22 16:13 19:15 20:7,7			
4			
4 19:3 21:21 22:11,12 27:11			
43 2:8			
5			
5 10:9 24:7			
6			
6 27:18 624-6221 1:24			
7			
7th 28:20 795 4:5			
8			
866 1:24			
9			
9 10:9 9:00 10:12 92 6:14			